

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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| WILLIAM WARREN | : | |
| Plaintiff, | : | |
| CIVIL ACTION | : | |
| | : | |
| v. | : | |
| | : | |
| CORRECTIONAL PHYSICIAN SERVICES | : | |
| INC., GLEN JEFFES & R.F. SCALIA, | : | |
| No. 94-6562 | : | |
| M.D. | : | |
| Defendants. | : | |

MEMORANDUM-ORDER

GREEN, S.J.

September 12th, 1997

Presently before the court is Plaintiff's Motion for Summary Judgment on his 42 U.S.C. § 1983 claim, and Defendants' Cross-Motion for Summary Judgment. For the reasons set forth below, Plaintiff's motion will be denied and Defendants' motion will be granted.

Factual Background

Plaintiff, Warren is an inmate at the Pennsylvania Correctional Institution at Graterford ("Graterford"). Defendant, Correctional Physician Services, Inc. ("CPS") is a corporation contracted by the Pennsylvania Department of Corrections to provide medical services to inmates at Graterford. Defendant, Glen Jeffes ("Jeffes") is an employee of CPS and serves as the Medical Administrator at Graterford. Defendant, R.F. Scalia ("Dr. Scalia") is a physician under contract with CPS to provide medical care and treatment to inmates at Graterford.

Warren suffers from severe headaches and seizures for which he was prescribed Fiorinal, Phenobarbital, and Dilantin. On April 14, 1994, Warren sought to renew his prescription during a sick call visit at Graterford. Dr. Scalia renewed Warren's seizure medications, Dilantin and Phenobarbital, but he did not renew the headache medication Fiorinal. Warren claims that he pointed out this omission to Dr. Scalia and a confrontation ensued. Later that evening, Warren complained of a headache and the Fiorinal prescription was renewed by Dr. Moyer, another CPS physician.

Warren alleges that another confrontation ensued during his next sick call visit with Dr. Scalia on June 10, 1994. Later that day, another CPS physician renewed Plaintiff's prescription for Fiorinal.

Warren claims that Dr. Scalia, without medical justification, discontinued his Fiorinal prescription on two subsequent occasions, June 28 and July 13, 1994. The medical records state that Dr. Scalia discontinued Fiorinal due to his concern that Warren may be developing an addiction to this narcotic medication. Dr. Scalia claims that the Counsellors at Graterford told him that Warren had been severely addicted to the medication such that it took one year to detox and wean him from the medication. Dr. Scalia discontinued the Fiorinal prescription pending the outcome of a medical evaluation of the Plaintiff. Warren claims that he had never been in any drug or alcohol detoxification program. Warren has provided a letter from the

Deputy Superintendent of Centralized Services which confirms that he was never enrolled in any such programs.

Warren filed two grievances with Jeffes concerning Dr. Scalia's alleged misconduct. Plaintiff then instituted this civil rights action pursuant to 42 U.S.C.A § 1983. The gravamen of Plaintiff's claim is that Dr. Scalia's failure to renew his Fiorinal medication evidenced deliberate indifference to his serious medical needs and caused him unnecessary pain and suffering.

Discussion

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits ... show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A dispute regarding a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The evidence presented must be viewed in the light most favorable to the non-moving party. Lang v. New York Life Ins. Co., 721 F.2d 118, 119 (3d Cir. 1983). The moving party has the initial burden of demonstrating that no genuine issue of material fact exists. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

In order to state a claim under 42 U.S.C § 1983 relating to denial of medical care, Plaintiff must allege conduct by the Defendants that evidences "deliberate indifference" to a serious

medical need that amounts to cruel and unusual punishment in violation of the Eighth Amendment. Estelle v. Gamble, 429 U.S. 97, 103 (1976).

The Third Circuit has defined "deliberate indifference" as the denial of access to diagnosis or treatment by qualified professionals. Durmer v. Carroll, 991 F.2d 64, 68 (3d Cir. 1993) (citing Monmouth County Correctional Institution v. Lanzarro, 834 F.2d 326, 346 (3d Cir. 1987)). In this case, it is clear from the record that Plaintiff received medical care. Plaintiff has failed to show conduct by the Defendants that could be construed as "deliberate indifference" to his serious medical needs. To the contrary, the record indicates that Warren was given extensive medical care, including continued access to Fiorinal. Although Dr. Scalia did not renew Warren's Fiorinal prescription, Plaintiff received this medication from other CPS physicians. Moreover, Plaintiff received Tylenol, Motrin and aspirin when he requested these medications for headaches.

Dr. Scalia claims that he discontinued Fiorinal because of his concern that Warren was becoming addicted to the drug.

Warren claims that he was not addicted to Fiorinal and that Dr. Scalia deliberately withheld his medication. However, Warren has offered no evidence that Dr. Scalia did not act upon a reasonable belief that Warren was becoming addicted to the drug. Moreover, it is significant that Dr. Scalia requested further medical evaluation of Plaintiff's condition. This could hardly be

construed as "deliberate indifference" to Plaintiff's medical needs.

This is simply a dispute between an inmate and a physician over medical treatment which Plaintiff has attempted to characterise as a constitutional claim. However, it is well-settled that an inmate's disagreement with a physician's diagnosis or treatment will not give rise to an Eighth Amendment violation. See, White v. Napoleon, 897 F.2d 103, 110 (3d Cir. 1990); United States ex rel. Walker v. Fayette County Jail, 559 F.2d 573, 575 n.2 93d Cir. 1979); Bowring v. Godwin, 551 F.2d 44, 48 (4th Cir. 1977).

Accordingly, since there are no genuine issues of material fact, and plaintiff has failed to sustain his burden of producing evidence that would permit a reasonable jury to infer conduct by Defendants that constitutes "deliberate indifference" to his medical needs, summary judgment in favor of the Plaintiff will be denied. Summary judgment in favor of Defendants will be granted. An appropriate order follows.